IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 900 of 2006

MOHD.SAHID & ORS.
V/S
SMT.RAMJANO

Mr. RAJESH CHOUDHARY for Mr. SURESH SHRIMALI, for the appellant / petitioner

Mr. S SURANA, for the respondent

Date of Order : 1.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The matter comes up for consideration of stay. However, apart from the fact that while ordering record to be requisitioned vide order dt. 19.2.2007, the matter was ordered to be listed for final disposal after receipt of the record.

By the impugned order, the learned lower Appellate Court has set aside the decree of the learned trial court, and has remanded the matter to the learned trial court with a direction to hear the matter again, and to decide according to law in view of the observation made in the judgment.

A perusal of the judgment shows that the observations made is that documents Ex. 1 and 2 are the

certified copies of the judgments which have not been taken into account by the learned trial court though the documents have direct bearing on issue no. 1. Request was made to the learned lower Appellate Court by both the learned counsel that the Appellate Court itself should consider the documents Ex. 1 and 2, and decide the matter itself. Notwithstanding this the learned lower Appellate Court declined to consider the matter itself, and has remanded the matter.

In my view, in view of the provisions of O. 41 Rule 24, and in view of the joint submission made by the learned counsel for both the parties before the learned lower Appellate Court to itself decide the matter, there was no justification to remand the matter to the learned trial court.

Accordingly, the appeal is allowed. The impugned order is set aside, and the matter be sent back to the learned lower Appellate Court with a direction to restore the appeal to its original number, and decide itself, on merits in accordance with law, and expeditiously. The parties are directed to appear before the learned lower Appellate Court on 10.9.2007. The record of the learned courts below be returned forthwith.

(N P GUPTA),J.

/Sushil/